



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*86 Chambers Street  
New York, New York 10007*

November 30, 2016

**By ECF and Hand Delivery**

Honorable Denise L. Cote  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: *Calderon-Cardona v. Deutsche Bank Trust Company Americas*  
11 Civ. 3288 (DLC)

Dear Judge Cote:

This Office writes on behalf of the United States of America (the “Government”), which is a non-party to this matter, in response to Petitioners’ motion for the turnover of funds held in certain blocked accounts at Deutsche Bank Trust Company Americas (“DBTCA”) (the “Blocked Funds”). *See* Dkt. Nos. 98-101 (the “Turnover Motion”); *see also* Dkt. Nos. 96, 97 (Court orders directing briefing regarding the Blocked Funds). As explained previously in the Government’s Statement of Interest filed on July 20, 2016 (Dkt. No. 90), the Court should not direct the turnover of the Blocked Funds absent a license from the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). Petitioners are not entitled to a turnover of these funds because OFAC has now denied Petitioners’ application for a license for the transfer of these funds.<sup>1</sup> Pursuant to the applicable regulations and as recently confirmed by the Second Circuit in *Harrison v. Republic of Sudan*, 838 F.3d 86, 96-98 (2d Cir. 2016), this denial alone precludes the turnover of the Blocked Funds.

In the Statement of Interest, the Government explained that, pursuant to regulations implementing the North Korean sanctions program, the Blocked Funds may not be turned over without an OFAC license, for which Petitioners had not applied at the time the Statement of Interest was filed. Statement of Interest at 2-3, 17-20. Specifically, the North Korean Sanctions Regulations provide that any attachment or judgment concerning any property or interest in property blocked pursuant to those regulations and to Executive Order 13,466, “[u]nless licensed pursuant to this part” by OFAC, is “null and void.” 31 C.F.R. §§ 510.202(c), (e); Statement of Interest at 18. Section 1610(g) of the Foreign Sovereign Immunities Act (“FSIA”) does not override other applicable requirements, such as the need to obtain an OFAC license, in contrast to the Terrorism Risk Insurance Act (“TRIA”), which permits attachment of blocked assets in specified circumstances “notwithstanding any other provision of law.” TRIA § 201(a). The

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<sup>1</sup> This Office understands that OFAC issued its license determination on November 30, 2016. *See* Ex. 1 (OFAC license determination).

Statement of Interest noted that the issue of whether an OFAC license is required when a plaintiff seeks to attach property under the FSIA was being examined by the Second Circuit in relation to a pending petition for rehearing in *Harrison v. Republic of Sudan*, No. 14-121-cv (2d Cir. 2015). Statement of Interest at 19. The Second Circuit issued its rehearing opinion in *Harrison* on September 22, 2016, clarifying that “when the TRIA does not apply and the funds at issue are attachable by operation of the FSIA alone, an OFAC license is still required.” *Harrison*, 838 F.3d at 98.

Petitioners do not dispute, nor could they, that they must be granted an OFAC license in order to obtain a turnover of the Blocked Funds. Indeed, Petitioners have acknowledged that they must comply with the OFAC license requirement in at least two submissions to the Court, including the Turnover Motion. See Turnover Motion at 2; *Calderon-Cardona v. JPMorgan Chase Bank, N.A.*, No. 11 Civ. 3283 (DLC) (S.D.N.Y. 2011) (Dkt. No. 123) (Petitioners’ letter dated October 26, 2016); see also Dkt. No. 103 (Response of Respondent/Garnishee DBTCA, agreeing that Petitioners must obtain an OFAC license before the Blocked Funds may be turned over).

As stated herein, OFAC issued its determination, denying Petitioners’ application for a license, on November 30, 2016. See Ex. 1. In light of this denial, and pursuant to clearly established statutory, regulatory, and Second Circuit law, the Court should not order the turnover of the Blocked Funds.<sup>2</sup> We thank the Court for its consideration of this matter.

Respectfully submitted,

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<sup>2</sup> Because OFAC’s denial of a license is itself dispositive of the Turnover Motion for the reasons explained herein, the Government does not take a position in this letter on whether the additional materials submitted by Petitioners in support of their Turnover Motion are sufficient to establish that the Blocked Funds are subject to attachment under Section 1610 of the FSIA. See Statement of Interest at 13-17 (discussing the requirements for an attachment of property under Section 1610 of the FSIA). The Court need not address the more complex attachment issue in light of the license determination. Should the Court determine that it needs to address the other requirements for attachment under FSIA § 1610, the Government respectfully requests an opportunity to provide further briefing.